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# Setback in challenge to CIA's anti-gay policy

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A homosexual engineer who sued the Central Intelligence Agency to obtain a high-level security clearance has been told that he can't see the documents supporting the government's case because they are classified.

Richard Gayer, a circuitry designer with GTE-Sylvania in Mountain View, contends in his lawsuit that the CIA should not be allowed to deny him clearance because he is gay.

The U.S. attorney's office filed a motion to dismiss the case in federal court and, in Gayer's words, "put the heart of its arguments in documents classified as secret, which only the judge can see."

"It's a difficult thing when the government is able to deal privately with the judge. It's hard to argue against what you can't see," he said.

Gayer, who is also an attorney, is representing himself in the class-action suit charging discrimination on the basis of sexual preference. He is challenging a CIA policy against granting high-level security clearance to homosexuals.

In a hearing Wednesday in San Francisco, Gayer asked Judge Spencer Williams to open up the documents, or explain why they had to be classified. Williams denied Gayer's request.

Government lawyers had asked to have the case dismissed "on the grounds that the case cannot proceed further without causing the disclosure of state secrets." In support of that claim, the government has filed a list of reasons why further proceedings would expose state secrets. That is the document Gayer has been denied the right to see.

Patrick Bupara, an assistant U.S. attorney, said Wednesday that he could not explain the need for classified material in the documents submitted to the court. Bupara said he had recently been transferred to the case and was not fully familiar with it.

Gayer's suit, filed in January, is the third such suit filed against the CIA in three years. It asks that the agency be directed to decide on his August 1982 application for a "need-to-know" security clearance and to do so without discrimination. The application was withdrawn in July 1983 by Gayer's employer, GTE-Sylvania, but his lawsuit asks the CIA to act on his request for the clearance.

Gayer, 45, was part of a group of GTE engineers

assigned to the Searcher program, a contract with a federal agency whose identity is classified. Gayer said he believes the agency is the CIA. The project required the highest level of security clearance, and Gayer says he has been taken off the project.

Gayer has had a hard time from the beginning finding out why his application was being held up.

He learned through a Freedom of Information Act request that his file at the Defense Investigative Service, a clearinghouse for security clearances, had been requested by the CIA just one month after his application. Sen. Alan Cranston, D-Calif., made inquiries on Gayer's behalf, but the CIA refused to comment.

A Los Angeles attorney, David Audlin, who is representing a gay client in a similar suit against the CIA, on Wednesday called the classified status of the government's arguments "outrageous."

"How can a legal argument contain classified information?" Audlin asked. "Arguments are based on statute, case law or the Constitution . . . and as far as I know, the Constitution is not yet a state secret."

The government's motion to dismiss the case will be heard May 31.

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